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Applicant: Herz, et al.
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Examiner: Hassan Mahmoudi
Art Unit: 2165

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: 10-16-04

MAIL STOP AMENDMENT
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF FREDERICK S. M. HERZ
UNDER 37 C.F.R. §1.131**

Sir:

I, Frederick S. M. Herz, state and declare the following:

1. I am one of the inventors on the above-identified application.
2. Prior to August 31, 1999, Applicants herein had conceived the subject matter of each of claims 3-12 (as originally filed and as amended to the present).
3. As partial proof of the conception of such subject matter, attached hereto as Exhibit A is a true copy (with page and line numbers later added) of a draft of a document that became U.S. provisional patent application no. 60/161,640 filed on October 27, 1999, which draft was in existence prior to August 31, 1999. Indeed, such draft existed on July 14, 1999 as shown by the legend at the top of the first page. The draft of Exhibit A was one of several drafts written over the course of a number of

months. A copy of a fax I received at a hotel on April 14, 1999, which transmitted an earlier draft, is attached as Exhibit B. This earlier draft bears a legend indicating that co-inventor David C. Parkes started or complete a draft on January 3, 1999, which was edited in March, 1999 by Mr. Parkes and myself.

4. Also attached hereto, as Exhibit C, is a chart showing, for claim 3, the only independent claim of the present application, at least one or more portions of Exhibit A evidencing conception thereof prior to August 31, 1999.

5. From prior to August 31, 1999 until October 27, 1999, Applicants worked diligently to complete their patent application, with no more than a few days possibly passing during the interval when one or more of the inventors or their patent counsel were not working on the preparation of the application. An updated (from Exhibit A) draft thereof was sent to Applicants' then patent counsel, Woodcock Washburn Kurtz Mackiewicz and Norris, LLP ("Woodcock et al."), on September 23, 1999, as shown by Exhibit D, a copy of the first page of a draft to which a sheet of paper was attached, bearing the Woodcock et al date stamp of September 23, 1999. On information and belief, Woodcock et al. promptly and diligently undertook to review, polish and complete the application, did complete the application, and the application was filed on October 27, 1999. Exhibit D is a copy of the first page of a document obtained from the Woodcock et al files in discovery relating to a patent owned by the same assignee as this application, and is Bates stamped from that litigation, as is Exhibit A.

I, the undersigned, declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this document and any patent which may issue from the above-identified patent application.

Date: _____

Frederick S. M. Herz

